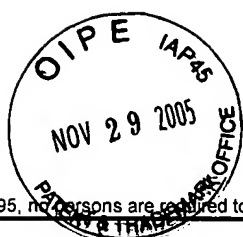


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PTO/SB/33 (07-05)

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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

011715

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Application Number

10/035,334

Filed

January 4, 2002

First Named Inventor

Michael Wiedeman

Art Unit

3636

Examiner

A. D. Barfield

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 29,988

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Signature

William F. Westerman

Typed or printed name

202-822-1100

Telephone number

November 29, 2005

Date

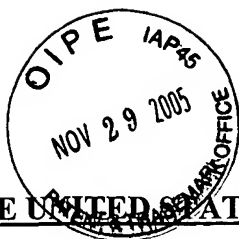
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

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\*Total of 1 forms are submitted.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Application of: **Michael WIEDEMAN et al.**

Group Art Unit: **3636**

Application Number: **10/035,334**

Examiner: **Anthony D. Barfield**

Filed: **January 4, 2002**

Confirmation Number: **2251**

For: **VEHICLE SEAT**

Attorney Docket Number: **011715**

Customer Number: **38834**

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**Mail Stop AF**

November 29, 2005

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Sir:

**REMARKS**

Claims 1, 6, 8, 10, 12, 25 and 28 stand rejected under 35 U.S.C. §102(e) as being anticipated by Lohr (USP 6,568,735). Claims 2-5, 9, 11, 13, 26 and 27 and 29-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Claims 14-24 are allowed.

More specifically, the Office Action dated September 15, 2005, finally rejected claims 1, 6-8, 10, 12, 25 and 28 under 35 U.S.C. §102(e) as being anticipated by Lohr. It is the position of the Office Action that Lohr discloses the following features recited in independent claim 1:

1. "a central pillar extending from the floor to the roof of the vehicle;
2. "a seat bottom directly fixed to and supported by said lower rib;
3. "a seat back fixed to and supported by said intermediate rib."

It is respectfully submitted that the above elements of claim 1 are not disclosed by Lohr and thus are not anticipated by Lohr. Similar arguments also apply for independent claims 25 and 28.

The issue presented for review is whether or not Lohr discloses the three elements described above with regard to claim 1. Lohr must disclose all of the elements of the claim, including those described above, in order to anticipate claim 1. If Lohr fails to disclose each and every feature of claim 1 (including the three elements disclosed above), then claim 1 cannot be anticipated by Lohr. Thus, if Lohr does not disclose each and every element of claim 1, including all of the three elements described above, then a *prima facie* rejection of claim 1 has not been established.

For at least the following reasons, the position of the Office Action that Lohr discloses the above three elements is a clear error of fact and not a question of interpretation of the claims or prior art teachings. Accordingly, the rejection of claim 1 should be withdrawn.

1. As described above, claim 1 recites the following element:

**...a central pillar extending from the floor to the roof of the vehicle;**

Thus, the above element of claim 1 requires that a “central pillar” extend from the floor to the roof of the vehicle. This central pillar is illustrated as reference numeral 11 in Fig. 1 of the instant application. The outstanding Office Action maintains that Lohr discloses such a “central pillar”. In response to Applicants’ arguments to the contrary in the response dated June 30, 2005, the Office Action states in its, “Response to Arguments”, that:

...the central pillar (11) as taught by Lohr could in fact be disposed in a central area of the vehicle and have another seating area disposed on the opposing side of the pillar, which is common and inherent in many mass transit vehicles. Applicant is reminded that there does not have to be a stated disclosure by Lohr of a central pillar but what would tone [sic] of ordinary skill in the art “gleam [sic] from the disclosure of Lohr who shows a pillar with a lateral rib, which is in accordance so far as defined by the claimed invention (emphasis supplied).

Applicants’ arguments with regard to this rejection are already spelled out in Applicants’ response of June 30, 2005 (see page 12, line 1 through page 13, line 9). Furthermore, the Office Action does not address the question of whether or not it is “common knowledge” to put such a central pillar in a vehicle of Lohr. The Office Action does not fulfil its duty under MPEP 2144.01(A) to provide evidentiary support for such an assertion.

Additionally, it is noted that simply suggesting that a reference “could” disclose or suggest the claimed feature is not sufficient. The Federal Circuit has stated that, “the mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.” (emphasis supplied) In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). While the above case is addressing an obviousness rejection, the fact is that the standard for anticipation is even higher. Thus, if the obviousness standard is not met, as in the instant case, then it certainly has not reached the anticipation standard. Lohr simply does not disclose this feature. The only way to arrive at this feature is to suggest it could have it. Accordingly, it is submitted that there is at least an error in the rejection of claim 1 over Lohr.

2. As noted above, claim 1 also recites the following:

**...a seat bottom directly fixed to and supported by said lower rib;**

As stated above, Lohr does not disclose this feature of claim 1. Applicants' arguments regarding this element of the claim are clearly set forth in Applicants' response of June 30, 2005 (page 13, lines 10-17).

Thus, Lohr does not disclose this feature as recited in claim 1. Moreover, the outstanding Office Action does not respond to Applicants' remarks regarding this element of claim 1 in the June 30, 2005 response. Accordingly, it is submitted that there can be no anticipation of claim 1 by Lohr, because Lohr does not disclose, "a seat bottom directly fixed to and supported by said lower rib". Thus, there is at least a clear error in the rejection because this element is not shown in Lohr.

3. Additionally, claim 1 also requires the following element:

**...a seat back fixed to and supported by said intermediate rib.**

Thus, claim 1 requires that the seat back be fixed to and supported by the intermediate rib. Lohr simply does not disclose this feature either. This argument is clearly set forth in Applicants' response of June 30, 2005 (page 13, line 18 through page 14, line 4).

Also, the Office Action did not respond to this argument set forth in Applicants' June 30, 2005 response. It is submitted that this element of claim 1 is clearly not disclosed by Lohr, and that this, also, is a clear error.

In view of the remarks above, it is clear that Lohr does not show each and every feature of claim 1. Furthermore, Applicants submit that the features that are not shown by Lohr, are not something that "one of ordinary skill in the art would gleam [sic] from the disclosure of Lohr".

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Art Unit 3748

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Attorney Docket No. 011715

Furthermore, the same arguments discussed above with regard to claim 1 also apply to independent claims 25 and 28. In addition, claims 6-8, 10 and 12 are dependent from claim 1 and limited to the additional features set forth therein. Accordingly, none of these claims are anticipated by Lohr.

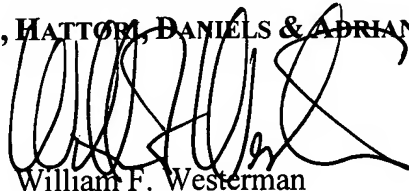
Accordingly, since there has been clear error of fact, as described above, in that the claim elements have not been met by Lohr, a *prima facie* case has not been established for the rejection of claims 1, 6-8, 10- 12, 25 and 28. It is respectfully submitted that said claims are, in fact, allowable. It is thus respectfully requested that the rejection be withdrawn and that claims 1-30 be passed onto issue.

In view of the foregoing remarks, it is submitted that all pending claims are in condition for allowance. A prompt and favorable reconsideration of the rejection and an indication of allowability of all pending claims are earnestly solicited.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP



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WFW/dlt